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TEXAS BOARD OF LEGAL SPECIALIZATION

April 30, 2012

Ms. Bridget C. Bohac, Chief Clerk
MC-105, TCEQ
P.O. Box 13087
Austin, Texas 78711-3087

via Fax & Certified Mail,
Return Receipt Requested

Re: Application of the Lower Colorado River Authority to amend its Water
Management Plan under Certificates of Adjudication Nos. 14-5478 and 14-5482.

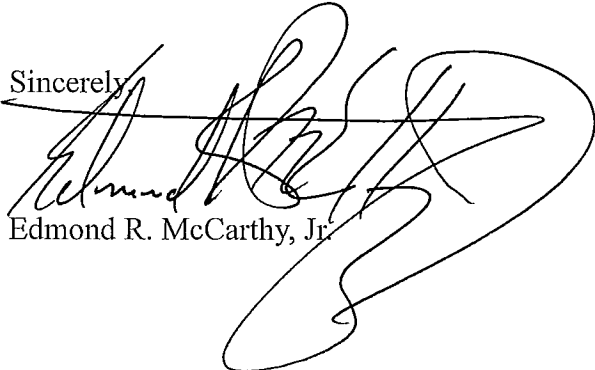
Dear Ms. Bohac:

The purpose of this letter is to transmit to the Commission Staff the enclosed preliminary comments on LCRA's pending application to amend the Water Management Plan required by Certificates of Adjudication Nos. 14-5478 and 14-5482 from the Colorado Water Issues Committee (CWIC) of the Texas Rice Producers Legislative Group, a non-profit association whose members are Texas rice farmers within the four irrigation divisions (Lakeside, Garwood, Pierce Ranch, and Gulf Coast) of the LCRA's Lower Colorado Basin and customers for water of the LCRA. By copy of this letter, I am providing copies of CWIC's comments to members of TCEQ's Office of Water and Water Rights Permitting Staff, as well as the Lower Colorado River Authority.

Should you have any questions, please feel free to contact me at (512) 225-5606. Thank you for your assistance.

Best wishes.

Sincerely,


Edmond R. McCarthy, Jr.

ERM/tn
Encl.

April 30, 2012

Page 2

cc: (via Certified Mail/Return Receipt Requested)

TCEQ Office of Water

Attn: L'Oreal Stepney, P.E.

Todd Chenoweth

Kellye Rila

Iliana Delgado

TCEQ Legal

Attn: Todd Galiga

LCRA

Attn: Board of Directors

c/o Attn: Becky Motal, General Manager

John Rubottom, General Counsel

Lyn Clancy, Office of General Counsel

Greg Graml, Office of General Counsel

CWIC

Attn: Ronald Gertson, Chair

Appendix “A”

Texas Rice Producers Legislative Group, Colorado Water Issues
Committee Preliminary Comments on LCRA’s Application to Amend
Certificates of Adjudication Nos. 14-5478 and 14-5482

Comments to TCEQ on the LCRA's Proposed Water Management Plan

Provided by the Colorado Water Issues Committee
of the Texas Rice Producers Legislative Group

April 26, 2012

The Colorado Water Issues Committee (CWIC) of the Texas Rice Producers Legislative Group (the "Rice Producers") offers the following comments regarding the Application of the Lower Colorado River Authority ("LCRA") filed March 12, 2012, to amend the Water Management Plan ("WMP") associated with LCRA's Lakes Travis and Buchanan and mandated by its separate Certificates of Adjudication Nos. 14-5428, as amended, and 14-5482, as amended. The Rice Producers have requested to be placed on the TCEQ's mailing list in order to receive copies of all notices, updates, draft amendments and/or technical memoranda and analyses related to this Application. The Rice Producers intend to closely monitor this Application as it moves through the process and anticipate filing additional comments based upon staff recommendations and any supplemental filings by LCRA.

Rice production in the four irrigation divisions of LCRA's lower basin dates back to the 1800s, and predates the creation of LCRA and the construction of the Highland Lakes, including Lakes Travis and Buchanan. Members of the Rice Producers have been customers of irrigation water supplied by LCRA since the completion of construction of the Highland Lakes.

Representatives of the Rice Industry were pleased to participate in the LCRA stakeholder process that led to some of the recommendations adopted in the WMP presented in the Application. However, as discussed herein, the Rice Producers have significant concerns about specific provisions contained in the WMP, as well as the process used to develop them.

As presented in LCRA's Application, the WMP is critically flawed. For the reasons discussed herein, the WMP should not be approved by TCEQ as filed.

Rather than recommend outright denial, however, the Rice Producers urge TCEQ staff to work with LCRA to remedy the flaws during the application process and before the amendment is presented to the Commission for consideration (or if it is uncontested) the Executive Director for approval. While the Rice Industry recognizes and appreciates the unfortunate consequences of low lake levels upon those interests who purchase no water from LCRA and hold no water rights in the Highland Lakes but profit from the secondary benefits derived from the recreational use and aesthetic value of the incidental efforts of higher lake levels, we are extremely concerned that efforts to increase lake levels for these low priority beneficial uses through the restriction of water availability for the higher statutorily-mandated uses such as irrigation has dire consequences for both the State and, in particular, the Rice Industry. Specifically, at a time when available water supplies from storage need to be distributed for cultivation of agriculture and maintenance of downstream bays and estuaries, maintaining a full lake simply for its aesthetic and/or recreational use and allowing the resource to evaporate is not only a failure to maximize its beneficial use, it is a waste of the resource.

The Rice Industry submits that as filed the WMP unreasonably and inappropriately restricts the availability of irrigation water beyond the requirements needed to protect LCRA's firm water customers and, therefore, is not reasonable or lawful. Moreover, the resulting adverse impacts of the WMP to the Rice Industry are exacerbated by limiting the availability of water for irrigation purposes by maintaining

recreationally-beneficial lake levels for longer periods of time to promote recreational interests. Not only do these recreational interests not pay for the water retained in the lakes to the detriment of the Rice Producers, these consequential beneficiaries are newcomers unlike the Rice Producers who are in their second century of reliance upon the water to irrigate their crops. It is well documented that Lakes Buchanan and Travis were intended to be “storage buckets” that would be “filled and drained” to supply water for beneficial uses – they were not built nor intended to be operated as constant level lakes. Use of the lakes for recreational and/or aesthetic purposes is strictly for a fortunate incidental side-benefit of their existence. Texas cannot afford to head down the slippery slope of protecting consequential recreational lake levels on its precious and limited water supply lakes.

We respectfully request that during its review of LCRA’s Application, TCEQ facilitate changes to the WMP necessary to assure LCRA’s adherence to its legal obligations, including maximizing its beneficial use, avoidance of waste and enhancement of conservation by LCRA and all of its customers irrespective of whether they are characterized as firm or interruptible; to facilitate the greatest quantity of available water for downstream users annually. We further request that TCEQ correct LCRA’s erroneous interpretation of the prior TCEQ agreed order to allow non-customer representatives to participate in a “decision making role” in any future stakeholder process employed to develop future modifications to the WMP. In the future, non-customer interest representatives, other than environmental, should participate solely in advisory roles on future stakeholder groups dealing with WMP provisions in an effort to minimize the likelihood of such interests having undue impact on the availability of water supplies for LCRA’s customers and the environment.

To that end we provide the following detailed suggestions to the WMP:

1. **The Inflexible Curtailment “Cap” is both contrary to beneficial use of state water as a public resource and inconsistent with State law and the Final Decree and Order entered in the Adjudication**

Explanation:

Section 4.3.2.2 of the WMP at pages 4-7 to 4-10 describes the “cap” on supplies available on an annual basis for diversion within the downstream LCRA irrigation divisions as follows:

4.3.2.2. Annual limit for the supply of interruptible stored water

Under this WMP, the maximum amount of interruptible stored water supply that will be made available for diversions in any given year to the four **downstream irrigation operations will be limited even when storage levels in lakes Buchanan and Travis are relatively high or near full.** On an annual basis, no more than 273,500 acre-feet per year will be available for diversions for first and second crop during the interim demand phase, and no more than 249,000 acre-feet per year would be available for diversion during the 2020 demand phase. (emphasis added).

The stated curtailment cap is arbitrarily and unequivocally “fixed” irrespective of the lake levels and volume of water available in storage. Even if there is plenty of water, and the Rice Producers could put water to beneficial use without impairment of LCRA’s firm customers, the WMP prohibits releases from storage for such statutorily recognized beneficial use. Instead, the water is mandated to remain in storage and allowed to evaporate. In addition to being contrary

to both the letter and spirit of Chapter 11, Texas Water Code, the language in Final Decree and Order, and LCRA's Certificates of Adjudication which unequivocally provide that water not required to meet the demands of LCRA's firm customers be made available to LCRA's interruptible customers for beneficial use. The cap cannot be applied when water above curtailment triggers is available.

2. Curtailment of the ratoon crop outside of a curtailment period is inconsistent with State law and the Final Decree and Order entered in the Adjudication

Explanation:

As a public resource, under the Public Trust Doctrine, beneficial use of state water is to be maximized. Moreover, pursuant to the terms of the final order and decree in the adjudication of LCRA's water rights in Lakes Buchanan and Travis, water available in storage not required to meet the "actual demands" of LCRA's firm customers is to be made available for beneficial use by LCRA's interruptible customers when their demands cannot be otherwise met through diversions from LCRA's downstream run of river water rights. Accordingly, the curtailment of water otherwise available to supply the ratoon rice crop at times when lake levels do not mandate curtailment is unwarranted, inappropriate and unlawful. In addition, this ultra-curtailment was neither anticipated by nor agreed to by the Rice Producers during the stakeholder process.

Sections 4.3.2.2 and 4.3.2.3 of the WMP include conditions that would reduce ratoon crop acreage even when there is no ratoon crop curtailment being indicated by the WMP's established curtailment curves. There is no indication in the modeling accomplished for the preparation of the WMP that reflects or warrants curtailment of the ratoon crop when storage levels are above the agreed ratoon crop trigger levels. This ultra-curtailment has the dire effect of eliminating the ratoon crop, a practice in place since 1960. Moreover, it is not necessary to accomplish the goals of the WMP.

Recommendations:

There are numerous references in the Executive Summary and the WMP itself that must be adjusted to correct this error. Below are references we were able to identify along with the suggested corrections that illustrate the problem. We request TCEQ address these issues directly with LCRA during the Application Process.

Page ES-2, bullet 4:

- There will be an annual cap on the total amount of interruptible stored water available for contracting in any given calendar year. LCRA will use the annual cap in determining contracted main crop acres and, in curtailment years, will adjust the amount of interruptible stored water available for the ratoon crop to stay within the annual cap;

Page ES-7, annual limit on interruptible stored water, 1st paragraph:

Under this WMP, the amount of interruptible stored water made available for diversions in any given year to the four downstream irrigation operations will be

limited even when storage levels in lakes Buchanan and Travis are relatively high or near full. On an annual basis, main crop contracted irrigation acreage will be adjusted to target a use of no more than 273,500 acre-feet per year of interruptible stored water ~~will be available~~ for diversion for ~~first and second~~ the main and ratoon crops during the interim demand phase, and no more than 249,000 acre-feet per year of interruptible stored water ~~would be available~~ for diversion during the 2020 demand phase. When the applicable ratoon crop curtailment curve indicates the need for curtailment, ~~water~~ water available for contracting for ~~second~~ the ratoon crop ~~water~~ will be limited as necessary to both stay within the annual cap and abide by the applicable curtailment curve.

Page 4-7, Section 4.3.2.2. Annual limit for the supply of interruptible stored water:

Under this WMP, the amount of interruptible stored water made available for diversions in any given year to the four downstream irrigation operations will be limited even when storage levels in lakes Buchanan and Travis are relatively high or near full. On an annual basis, main crop contracted irrigation acreage will be adjusted to target a use of no more than 273,500 acre-feet per year of interruptible stored water ~~will be available~~ for diversion for ~~first and second~~ the main and ratoon crops during the interim demand phase, and no more than 249,000 acre-feet per year of interruptible stored water ~~would be available~~ for diversion during the 2020 demand phase.

The annual supply limit shall be used to adjust the amount of water that may be made available to an individual irrigation operation in ~~second~~ the ratoon crop if all of the following conditions exist:

- The use of interruptible stored water by an individual irrigation operation exceeded (or is projected to exceed) its allocation for ~~first~~ the main crop determined under Section 4.3.3; and
- The total use (or projected use) by all four irrigation operations in ~~first~~ the main crop, plus the total amount of interruptible stored water that would be made available for ~~second~~ the ratoon crop under Section 4.3.2.3, would exceed the annual limit described above; and
- The then applicable curtailment curve indicates a need for curtailment of the ratoon crop.

Under these conditions, the adjustment shall be limited to the amount necessary to stay within the annual limit and the constraints of the then applicable curtailment curve.

The annual limit will be used to determine the water available during the contracting process. However, notwithstanding any adjustments made to water available for contracting during ~~second~~ the ratoon crop, actual use could exceed the annual limit if necessary to complete a crop.

3. Water not used by the main crop must be available to the ratoon crop when there is no curtailment in affect.

Explanation:

It appears from procedures laid out on WMP (page 4-8 under section 4.3.2.3.) that each of the main crop and the ratoon has its own “capped use” amount, and that water unused under the main crop cap is not available for addition to the amount of water specified to be available for the ratoon crop. This limitation on the availability of water for the ratoon crop is in place even when water in storage in Lakes Buchanan and Travis is in excess of the volumes necessary to meet LCRA’s firm customer demand. As explained above, such limitation is arbitrary, as well as an unwarranted, harmful and wasteful misuse of a valuable resource that should be put to beneficial use without any impairment to the WMP.

Additionally, this newly adopted curtailment procedure removes a major conservation incentive for irrigators by removing their ability to use water they conserved on their main crop for irrigation of their ratoon crops. Here again there seems to be no sound argument for the available water to be provided to downstream irrigators for beneficial use. This “capped use” language also ignores the language above regarding both the need for the WMP to include the development of additional water supplies and the Board’s January 2012 commitment to develop at least an additional 100,000 ac-ft per annum of water supplies as further supported by the Board’s approved 2013 Business Plan.

Recommendations:

Add the following in WMP section 4.3.2.3. at the bottom of page 4-8 and after the bulleted section dealing with main and ratoon crop availability:

Notwithstanding the above limitations, any unused quantity of interruptible water made available for the main crop and not used in the main crop will be made available for addition to the stated ratoon crop availability except that the total availability for the ratoon crop will not be allowed to exceed the availability as determined by the then applicable curtailment curve.

See Comment No. 8 below regarding a proposed Chapter 6 to the WMP.

4. On-farm duty for calculating irrigable acreage.

Explanation:

For the first time the WMP introduces an “On-farm water duty” as a new concept to determine the quantity of acres to be irrigated in a given crop season. As such it is a very important number and has the capacity to encourage considerable conservation on the part of individual producers, which the Rice Producers support. However, the WMP’s use of the 2nd highest farm duty in the last five years as the divisor for determining the allowable crop season acreage is counterproductive. Specifically, the WMP’s formula does not enable the Rice Producers to benefit from conservation related reductions in that number until the two highest years have passed out of the five-year range of history being used here. A more appropriate and still

conservative approach is a “five-year rolling average,” which the Rice Producers urge Staff to direct LCRA to incorporate into the WMP.

Recommendations:

Change the wording of the last paragraph on page 4-12 of the WMP in section 4.3.6 to read as follows:

On-farm duty is a measure of the amount of water used to irrigate an acre of land (in acre-feet/acre) measured at the point of delivery. On-farm duty varies by type of crop, weather conditions and for each of the operations. LCRA will maintain records of water use by field for both first and second crop seasons. For purposes of calculating irrigable acreage, ~~when combined storage on the applicable determination dates is greater than or equal to 1.4 million acre-feet for first crop or greater than or equal to 1.55 million acre-feet for second crop,~~ LCRA will use the average on-farm water duty by crop category over the preceding five years within each irrigation operation for the applicable crop season. ~~When combined storage is below 1.4 million acre-feet or 1.55 million acre-feet on the applicable determination dates, LCRA will use the second highest on-farm duty from the preceding five years.~~

5. The “Dry Year Option”/“Dry Year Exception” should be deleted from the WMP.

Explanation:

Section 4.4 of the WMP, entitled “Exceptions to the Allocation Procedures for the Irrigation Operations,” allows the LCRA with the stroke of a pen, and without TCEQ oversight, to circumvent the limited protections to water availability to the Rice Producers. In reaction to the recent and ongoing drought conditions, conditions which caused LCRA to file an application with TCEQ to seek emergency relief from the requirements of the 2010 WMP to further curtail the delivery of water to downstream interruptible customers (Rice Producers) for beneficial irrigation purposes, the proposed WMP would grant LCRA “express authority to deviate, ..., from the curtailment provisions set out in Section 4.3 without TCEQ approval, ...” WMP pp. 4-15 to 4-16 (emphasis added).

This so-called “Dry Year Option” or “Dry Year Exception” is not only untenable, it is illegal. Pursuant to Chapter 11, Texas Water Code, and Chapters 295 and 297 of the TCEQ’s Rules (30 TAC), allowing LCRA to unilaterally modify the WMP which is a condition of its Certificates of Adjudication is tantamount to an *ad hoc* amendment of the LCRA’s water rights accomplished without any due process, including notice and opportunity for hearing, to parties that will be directly affected (negatively) by it.

The WMP’s proposed Dry Case Exception over-reaches stakeholder agreement on same. The Rice Producers are not, however, unsympathetic to the issues that confront LCRA during periodic severe drought periods. In fact, the Rice Producers were extremely cooperative and supportive of LCRA’s recent efforts to address LCRA’s drought driven supply issues during the last 18 months leading to LCRA’s filing an application for emergency relief from the WMP filed with TCEQ last fall. To this end, the Rice Producers believe that Section 4.4 of the WMP can be modified to create a “Dry Year Option” that follows the process employed to date. Specifically, the WMP can be modified to outline LCRA procedures for the assessment and determination of

the existence of severe drought conditions that may warrant seeking a temporary modification of the WMP affecting the delivery of water to all of LCRA's customers – not just downstream interruptible irrigation customers. That process, however, should expressly require: (i) input from affected stakeholders, and (ii) the filing of an application for emergency relief from TCEQ.

The "Dry Year Exception" that the stakeholders worked diligently on through the 2011 end-of-year holiday season at the LCRA Board's direction was designed to closely mimic the TCEQ emergency order now in place. As developed by the stakeholders, implementation of the Dry Year Option was not anticipated (i) solely on the basis of a unilateral "emergency decree" by the LCRA Board (without TCEQ approval); or (ii) at a time that would be accomplished mid-year and impact the ratoon crop.

The Rice Producers believe that any emergency departure from the WMP's specified curtailment procedures should occur only in the time frame just prior to the main crop. This was the practice used by LCRA for the 2012 irrigation season.

To bring the WMP into sync with this concept and provide due process to affected LCRA customers, the Rice Producers recommend that the language beginning in the middle of page 4-16 should be changed as follows and renumbered accordingly:

If the Board makes a finding that the Criteria for Potentially Deviating from the Standard Curtailment Procedures have been met, the Board may take action to deviate from such procedures and establish "Modified Curtailment Levels and Procedures" in accordance with the following provisions.

1. For ~~first~~ main crop, the Board finding regarding the potential to deviate from the Standard Curtailment Procedures, and any action to establish Modified Curtailment Levels and Procedures for making water available shall occur no earlier than at the August Board meeting and no later than at the December Board meeting.

[Note: The Rice Producers are sensitive to the fact that the identified months may need to be adjusted. The critical factor that TCEQ should address with LCRA if this language is approved is to allow for sufficient time built into the process to ensure that a final decision is made and published before March 1st of each year. March 1st is the last realistic date for irrigators to make the critical [irreversible] decision of whether or not to plant their crops.]

- ~~2. For second crop, the Board finding regarding the potential to deviate from the Standard Curtailment Procedures, and any action to establish Modified Curtailment Levels and Procedures for making water available shall occur no earlier than at the February Board meeting and no later than at the June Board meeting.~~

2. If the Board acts to establish Modified Curtailment Levels and Procedures:
 - a. The Modified Curtailment Levels and Procedures shall make no more interruptible stored water available for use in the downstream irrigation operations than would be made available under the applicable Standard Curtailment Procedures;

- b. The Modified Curtailment Levels and Procedures may rely on combined storage in lakes Buchanan and Travis on a date no earlier than March 1 for purposes of determining the amount of interruptible stored and run of river water to be made available for first the main crop. ~~and a date no earlier than August 1 for purposes of determining the amount of interruptible stored and run of river water to be made available for second crop;~~
- c. The Modified Curtailment Levels and Procedures shall include provisions for promptly reinstating the applicable Standard Curtailment Procedures or for responding to improved conditions;
- d. Modified Curtailment Levels and Procedures shall only be in effect for the immediate upcoming crop season ~~(first or second)~~ after the Criteria are determined to be met. If the Board finds that criteria specified above for deviating from the curtailment procedures in Section 4.3 also are met prior to any subsequent crop season, the Board may take action at that time to deviate from the Standard Criteria and Procedures and establish Modified Curtailment Levels and Procedures for that subsequent crop season in accordance with this Section 4.4.1.
- e. LCRA shall promptly publish notice, including mailed notice to all affected customers, upon the Board's adoption of such Finding and the proposed Modified Curtailment Levels and Procedures. Prior to implementing the Modified Curtailment Levels and Procedures, LCRA shall file and obtain approval from the TCEQ after TCEQ's publication of notice and opportunity for hearing by affected parties on any such recommendation.

6. The WMP needs to be more transparent about the use and role of return flows in meeting firm and interruptible demands.

Explanation:

The WMP at pages ES-8 and 3-2 makes reference to the treatment and use of return flows discharged by LCRA Customers into the basin. The WMP, however, does not elaborate on the volume of return flows available to LCRA, particularly below the Highland Lakes, or how those waters are used to meet the needs of LCRA's firm and interruptible customers— if at all.

Recommendations:

The WMP Executive Summary should describe each of the water sources available to LCRA. This description should include an overview of each of LCRA's separate water rights and what each authorizes. It should include a description of each of LCRA's reservoirs and an overview of each of their respective contributions to the LCRA water supply inventory, *e.g.*, storage and flood capacity, diversion rights, including specification of firm yield and any run-of-river available yield. Finally, LCRA's right of reuse of treated effluent that originates as surface water diversions authorized by its water rights, together with any bed and banks authorizations, and how this component of LCRA's water supply inventory will be utilized should be discussed in greater detail in the WMP. The overview descriptions contemplated here include specific authorized

volumes which, for example, are not shown on Table 3-1 on page 3-3, which provides a description of model assumptions.

Additionally, the description of the three LCRA variations on the TCEQ WAM relied upon by LCRA in the development of the WMP needs to be more transparent and user friendly. Specifically, in addition to providing the “Technical Papers” describing the “assumptions” used by LCRA to develop the three hybrid models, LCRA should make the actual models available to stakeholders.

Finally, the WMP should provide detailed explanations of the limitations and/or impacts on water availability that result from LCRA’s (i) settlement agreement on the ownership and use of return flows with the City of Austin, (ii) settlement agreement related to the provision of water to the South Texas Nuclear Project, and (iii) the subordination of LCRA water rights to upstream interests pursuant to so-called “no call agreements” (page 3-3) that the Region F Water Plan relies upon to provide the majority of the water needed to meet its projected demands through at least the year 2060.

7. **There is no mention of limiting future commitments of firm water as an additional means of dealing with the consequences of projected demands.**

Explanation:

As used in the WMP, “firm water” and/or “firm customer” does not have a meaning equivalent to a “firm yield.” Instead, “firm” means that the customer has contracted to pay LCRA a specified amount each year for a specific quantity of water to be available whether or not the customer needs or uses the water. In response, LCRA undertakes a contractual duty to provide that quantity of water if/when the customer calls for it.

Historically, LCRA has over contracted for firm customers or firm water in reliance upon the historic practice that those customers have not actually needed or used 100% of the volume contracted. LCRA has not prepared for nor developed the water supplies needed to meet its firm customers’ firm contract amounts on a firm yield basis.

Instead, as reflected in the WMP, LCRA has “bootstrapped” its water supply inventory by eroding the volume of water otherwise available for delivery to irrigation interests to the point where the WMP now contemplates artificial hard “caps” on water availability for interruptible use that is not actually needed by firm customers. The practice is further exacerbated by LCRA’s (i) proposed retention of water in storage for non-customer interests, while relying upon run of river water to meet firm demands to the point that water available in storage will not be available to irrigation uses and (ii) then, on the basis of the cap, deny irrigation access to the water readily available in any given year from storage.

In the second full paragraph on page 4-3 of the WMP LCRA identifies two potential ways of meeting increased demands: 1) decreasing interruptible water availability and 2) adding water supplies not identified in this plan. One additional, and very viable option, would be to cap increases in contracts for new firm customers for additional firm demands on current contracted firm yield commitments until additional water supplies can be developed.

Recommendation:

Change the wording in the above mentioned paragraph as follows:

Those increased demands are anticipated to ~~will be~~ be met in this revision by decreasing the amount of interruptible stored water provided under the 2010 WMP. The increased demands could also be ~~met~~ managed by a combination of capping increased commitments of firm water to new and existing firm water customers and by adding water supplies not identified in this plan.

Additionally, the WMP should include an appendix which identifies the following as of the date of the WMP:

- (i) LCRA's total contracted firm demand;
- (ii) LCRA's current annual demand included in the total in subparagraph (i) above; and
- (iii) LCRA's ultimate annual demand included in the total in subparagraph (i) above.

LCRA should consider limiting both new firm contracts and allowing any increase in existing commitments pending development of new water supplies until such time as LCRA develops additional water supply sources to meet both firm and interruptible demands. Increasing LCRA's available firm yield will enable LCRA to be more adaptive and more responsive to Texas' meteorological conditions and the water supply demands of all of its customers.

The development of reliable downstream water supplies by LCRA can greatly relieve the burden of existing demands on Lakes Buchanan and Travis. Downstream storage facilities would enable more efficient use of LCRA's current firm and run of river water rights. Adaptability under the WMP should be based upon "capping" water available for beneficial use by interruptible use simply because of arbitrary curtailment when water above the curtailment level is available in the lakes.

8. Chapter 6: The Next Frontier, and Necessary Prudent Step in Water Management of the Lower Colorado Basin is not Planning, but Development.

Explanation:

LCRA's recent Water Management Plans, including the subject WMP in LCRA's Application, have focused limitedly on water conservation and largely on water reallocation from interruptible to firm customers as the primary vehicles to meet only firm water demands within the basin. Little, almost no attention has been paid to the glaring need to develop (i) additional water supplies, and (ii) enhance/maximize existing run-of-the-river (non-firm) water rights through the construction of new or expanded storage infrastructure. The failed LCRA-SAWS project identified water infrastructure and additional supply sources that must now be utilized for meeting future demands within the lower Colorado basin. The WMP should address these issues.

If LCRA continues to rely upon conservation and water reallocation from agricultural interests, irrigated agriculture will fail and the limited security of water availability for its firm customers LCRA perceives from its current practices will vanish too. In addition to being one of the main reasons for LCRA's existence and longevity, agriculture, particular rice production, is the LCRA equivalent of the canary in the coal mine.

If the canary is not healthy, disaster in the mine is eminent. LCRA must insure the health of its canary. Planning for and implementation of strategies for new and enhanced water supplies within the lower Colorado basin must be an integral component of any LCRA Water Management Plan approved by TCEQ if LCRA is to fulfill its role in assuring the success of both the State Water Plan and meeting the needs of the entire lower Colorado basin.

Recommendations:

As a condition of approving LCRA's revised WMP Application, the Commission should direct LCRA to develop and file with TCEQ within one year of the effective date of the WMP a sixth chapter to the WMP to address the critical issue of development of additional water supplies. Chapter 6 should review, update and prioritize the opportunities for the development of additional water supplies in the near future as well as in the distant future with project options for water availability increases in five year intervals up to 25 years out. Longer terms should contemplate projects capable of delivering volumes of water for meeting the basin's longer-term firm water supply demands.

In addition to the identification of projects, LCRA should include cost estimates and a list of requisite permitting steps, together with a discussion of potential funding mechanisms. Implementation of these projects should then become LCRA's top priority.

The Rice Producers understand that including such a chapter in the WMP will be a new frontier for LCRA. Given the current dire circumstances brought on by the drought and the reality that LCRA cannot continue to manage projected water supply shortages through the simple and devastating reallocation of agricultural water supplies, it is time to tackle this issue. To this end the Rice Producers committed to work with the LCRA Board and staff to create this Water Development Chapter and, thereafter, to implement it.

9. Future Iterations of the Stakeholder Committee.

Explanation:

With respect to the "process," the Rice Producers believe that LCRA misconstrued the following Condition f) on page 7 of the TCEQ's January 27, 2010, Agreed Order on LCRA's 1999 WMP amendment, which states as follows:

"Because of the importance of updating the environmental flows and drought curtailment provisions of the WMP to reflect the best available science and information, LCRA shall promptly initiate, by no later than July, 2010, a revision process designed to develop further amendments to the Water Management Plan. The revision should be reasonably calculated to allow meaningful participation by interested basin stakeholder groups and to achieve regional consensus, where possible." (emphasis added by CWIC)

Because of LCRA's misconstruction of this condition, LCRA staff developed and presented to the LCRA Board a proposed WMP that for the first time employed a "consensus-based process" that has led to an injustice to LCRA's longest-term customers – the downstream irrigators. Condition f) on page 7 of the Order states as follows:

An additional flow in the LCRA stakeholder process resulted from the four categories of stakeholders utilized by the LCRA in this revision process. These categories were: firm water customers, interruptible water customers, and environmental interests and lake area businesses and residents. The latter two categories, environmental interests and lake businesses, are hereinafter referred to collectively as "non-customer interests".

All four of these groups to varying degrees have had representation on previous WMP revision advisory groups as well. The critical difference this time, however, was in the use of the *consensus* process, rather than utilizing the stakeholder group in an advisory or informational role. By including non-customer interests in a directed, consensus-based process designed to develop decisions on the WMP's content, LCRA allowed non-customers to have substantial control over whether consensus could be achieved.

The result of this so-called consensus is that the WMP presented to TCEQ includes provisions that (i) circumvent LCRA's statutory and adjudicated obligations to provide irrigation water to historic downstream agricultural LCRA customers and (ii) that exceed the provisions of the 1988 court order adjudicating the LCRA's rights to store and manage water in the highland lakes, including Lakes Buchanan and Travis.

Under provisions (e) and (f) of Finding 19 of the 1988 Adjudication, **LCRA "should" be making available any stored water that is not necessary "to satisfy all existing and projected demands for stored water pursuant to all firm, uninterruptible commitments" to irrigation customers.** (emphasis added)

The 2011 drought brought much pressure to bear upon LCRA and upon the consensus-based stakeholder process. In an effort to expedite the development of this new WMP, the stakeholder group was put on a very ambitious timeline that often truncated meaningful consideration of pertinent issues and rendered questionable the outcome of so-called consensus on initial issues.

Further exacerbating the issue of the characterization of the final WMP presented to and approved by the WMP is the fact that the majority of the WMP was not reviewed by and/or voted on by the stakeholder group, which the Board was told had reached "consensus" on its content. This action alone is both a disservice to the process and reflective of the flawed nature of it.

The disservice, however, is enhanced when you know that the stakeholders who participated in 20+ all day sessions over 18 months did not see the 226 page WMP product until it was released to the public on the LCRA website. Stakeholders then had less than 13 days to review, digest and provide substantive comments on it to LCRA on an individual basis. The bottom line being that in the end the stakeholders were left out in the cold, rather than being asked to reconvene (at least one last time) to review and discuss the final WMP product before it went to the LCRA Board.

As part of the Application process, TCEQ should correct LCRA's misinterpretations of the Commission's prior Order regarding stakeholder involvement in the development of future WMP amendments to avoid the unintended consequences of non-customer stakeholders having undue impact on the contents of the WMP to the detriment of LCRA's customer stakeholders.

Recommendations:

TCEQ should direct LCRA to include non-customer stakeholder group representatives solely as advisory participants in the stakeholder process. Efforts to achieve regional consensus, where possible, should involve only those stakeholders representing LCRA's then current customer base. To the extent that non-customer stakeholders are included in the stakeholder group, LCRA should strive for representation from both upstream and downstream impacted parties. For example, unlike the demographics of LCRA's most recent WMP stakeholder group, downstream recreational interests and commercial fishery interests that are impacted by stored water releases and curtailments under the WMP were not included in the stakeholder process either in a voting or advisory capacity. It is necessary that such recreational and indirect, incidental beneficiaries of Colorado River water be informed so as to be able to adequately account for changing conditions that may impact their interests. Their inclusion, however, should not be allowed in such a way as to have undue impact upon LCRA's legal obligations to its customers (firm and/or interruptible) and the environment.

Submitted by the Colorado Water Issues Committee (CWIC) of the Texas Rice Producers Legislative Group (TRPLG). TRPLG is a 501C5 organization representing the interests of Texas Rice Producers. Please contact Ronald Gertson, CWIC chair, for further information or questions regarding the above comments. Mr. Gertson may be reached by phone at 979-758-4670 or by email at ronaldg59@gmail.com.